

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHELLE GILBERT,

Plaintiff,

v.

JAMIE MARTINSON,

Defendants.

Case No. 3:20-CV-05262-BHS

ORDER TO SHOW CAUSE, AND  
DENYING MOTION FOR  
APPOINTED COUNSEL

This matter is before the Court on plaintiff's filing of applications for *in forma pauperis* status in this matter (Dkts. 6, 8, 10), a proposed complaint (Dkt. 1), and a motion for court appointed counsel. Plaintiff is proceeding in this matter *pro se*. Considering deficiencies in the complaint discussed below, however, the undersigned will not grant IFP or direct service of the complaint at this time. Plaintiff's motion for counsel is denied without prejudice. On or before **October 19, 2020**, plaintiff must either show cause why this cause of action should not be dismissed or file an amended complaint.

DISCUSSION

The Court must dismiss the complaint of a person who requests to proceed *in forma pauperis* "at any time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b) "fails to state a claim on which relief may be granted" or (c) "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. §

1 1915(e)(2); 28 U.S.C. § 1915A(a), (b). A complaint is frivolous when it has no arguable  
2 basis in law or fact. *Franklin v. Murphy*, 745 F.3d 1221, 1228 (9th Cir. 1984).

3 Before the Court may dismiss the complaint as frivolous or for failure to state a  
4 claim, though, it “must provide the *pro se* litigant with notice of the deficiencies of his or  
5 her complaint and an opportunity to amend the complaint prior to dismissal.” *McGuckin*  
6 *v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992); *see also Sparling v. Hoffman Constr.*,  
7 *Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Noll v. Carlson*, 809 F.2d 1446, 1449 (9th  
8 Cir. 1987). On the other hand, leave to amend need not be granted “where the  
9 amendment would be futile or where the amended complaint would be subject to  
10 dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

11 A plaintiff must allege that he suffered a specific injury as a result of the conduct  
12 of a particular defendant, and he must allege an affirmative link between the injury and  
13 the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).  
14 Sweeping conclusory allegations against an official are insufficient to state a claim for  
15 relief. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

16 Additionally, Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires a  
17 complaint to include a short and plain statement of the claim showing that the pleader is  
18 entitled to relief, in order to give the defendant fair notice of what the claim is and the  
19 grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007)  
20 (*citing Conley v. Gibson*, 355 U.S. 41 (1957)). The complaint must include more than  
21 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of  
22 a cause of action.” *Twombly*, 550 U.S. at 555-557.

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1           *Failure to State a Claim*

2           Here, plaintiff alleges that defendant Jamie Martinson, a manager at Reach  
3 Community Development, Inc., discriminated against her with respect to her disability.  
4 Dkt. 1, at 3. She claims she was disabled as of December 2018, due to physical injury.  
5 *Id.* at 5. She appears to be contesting the validity of a judgment of eviction against her,  
6 because she was not served with proper notice of the eviction hearing. *Id.* Plaintiff  
7 alleges that she was staying in a motel and not in residence when defendant served  
8 plaintiff with the eviction notice by mail, and that she was unfairly kept ignorant of the  
9 eviction hearing until after the fact. *Id.*; Dkt. 1-1 at 2. She further alleges in her motion  
10 for court appointed counsel that defendant retaliated against her for opening a prior  
11 lawsuit, but she does not include further facts on that point. Dkt. 1-1, at 2. Plaintiff seeks  
12 damages under the Americans With Disabilities Act and “federal statutes,” though her  
13 complaint suggests claims under the Fair Housing Act. Dkt. 1, at 3, 5.

14           The Americans with Disabilities Act (ADA) prohibits discrimination based on  
15 disability in employment, public services (e.g., city and local government programs,  
16 state-provided funding), public accommodations (e.g., businesses generally open to the  
17 public, recreation facilities), and telecommunications. 42 U.S.C. §§ 12101-12213.

18           Plaintiff’s alleged facts do not implicate any spheres protected by the ADA.

19           The Fair Housing Act prohibits discrimination in the sale or rental of any dwelling  
20 because of disability. 42 U.S.C. § 3604(f)(1). To state a claim for disparate treatment  
21 under the Fair Housing Act (FHA), a complaint must allege: (1) the plaintiff’s rights are  
22 protected under the FHA; and (2) defendants have engaged in discriminatory conduct  
23 by which plaintiffs have suffered a distinct and palpable injury. *See Gamble v. City of*

1 *Escondido*, 104 F.3d 300, 304 (9th Cir. 1997) (applying Title VII discrimination analysis  
2 to the FHA). To state a claim for retaliation under the FHA, the complaint must allege:  
3 (1) the plaintiff engaged in a “protected activity”; and (2) the activity was causally related  
4 to defendant’s interference with plaintiff, resulting in damages to plaintiff. See 42 U.S.C.  
5 § 3617; *San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 477 (9th Cir. 1998).

6 Plaintiff’s proposed complaint does not supply allegations beyond the bare  
7 accusations of discrimination and retaliation. Plaintiff has not alleged facts that supply a  
8 causal relationship between defendant’s conduct and plaintiff’s disability, so without  
9 further facts on that issue, the complaint fails to state either ADA or FHA claims.

10 *Subject Matter Jurisdiction*

11 Currently, plaintiff’s complaint fails to establish that this court has jurisdiction over  
12 her claims. As discussed above, plaintiff has failed to state a claim raising a federal  
13 question. Her allegations challenging the sufficiency of her eviction notice may provide a  
14 basis to contest the judgment of eviction, but this would be solely based on state  
15 statutory requirements of notice. See RCW 59.12.030(4).

16 The complaint also appears to assert diversity jurisdiction between plaintiff, a  
17 citizen of Washington, and defendant, who works for a corporation based in Oregon.  
18 Under 28 U.S.C. § 1332(a), the federal court’s diversity jurisdiction extends to “all civil  
19 actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is  
20 between . . . citizens of different States.” Yet the named defendant is a citizen of  
21 Washington. Furthermore, plaintiff has alleged exactly \$75,000 in damages, just short of  
22 the requirement. Therefore, plaintiff has failed to state a claim over which this court has  
23 subject matter jurisdiction.



1       **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42**  
2 **U.S.C. § 1983 civil rights complaint and for service, a copy of this Order and the**  
3 ***Pro Se* Information Sheet.**

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5       Dated this 19th day of August, 2020.

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9       Theresa L. Fricke  
10       United States Magistrate Judge  
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